

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8674 of 1996

HARESH H DAVE

Versus

STATE OF GUJARAT

Appearance:

MR DK NAKRANI for Petitioner

MR MR ANAND, GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 29/01/97

ORAL ORDER.

By means of filing this petition under Articles 226 and 227 of the Constitution of India the petitioner has prayed to issue writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated November 5, 1996 which is produced at annexure 'A'.

The impugned orders are passed by the respondent no.2 which is Taxation Authority and therefore the petitioner is entitled to file an appeal before the respondent no.1 in terms of Section 14 of the Bombay Motor Vehicles Tax Act, 1958 read with Rule 29 of the Bombay Motor Vehicles Tax Rules, 1959. As alternative effective statutory remedy is available to the petitioner, the petition cannot be entertained and the petitioner should be asked to resort to alternative remedy. The learned Counsel for the petitioner has submitted that while relegating the petitioner to alternative remedy, direction be given to the appellate authority to decide the appeal that may be filed by the petitioner within prescribed time and the respondents be restrained from taking coercive action against the petitioner for recovering the amount of tax.

Having regard to the facts and circumstances of the case, I am of the view that necessary direction deserves to be given to the Appellate Authority to decide

the appeal within stipulated period. Similarly direction to restrain the respondents from taking coercive action till decision of appeal also deserves to be granted as ad-interim relief is operating in favour of the petitioner since 29-10-1996 and learned Government Pleader has no objection if such direction is given by the Court. Under the circumstances, following directions are issued.

The petitioner is directed to file appeal before the Appellate Authority within a week from today. The respondent no.1 is directed to consider the said appeal on merits and in accordance with law as early as possible and preferably within one month from the date of presentation of memorandum of appeal.

The office is directed to send a copy of the order to the respondent no.1 immediately. It will be open to the petitioner to produce copy of the order before the respondent no.1 for necessary compliance. The respondents shall not take any coercive action for the purpose of recovering the tax till the appeal which may be filed by the petitioner is decided.

Subject to the foregoing directions, the petition fails and is dismissed. Notice is discharged, with no order as to costs. Ad-interim relief granted earlier is hereby vacated.

Date:-29-1-1997. (J.M. Panchal, J.)